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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,662	09/30/2003	Christopher Peter Olson	14.512.1	8978

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EXAMINER	
STEPHENS, JACQUELINE F	
ART UNIT	**PAPER NUMBER**
3761	

MAIL DATE	DELIVERY MODE
08/13/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/676,662	OLSON ET AL.	
	Examiner	Art Unit	
	Jacqueline F. Stephens	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *4/12/07*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,4,7-9,11,14,15,17-19,21 and 24-34* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,4,7-9,11,14,15,17-19,21 and 24-34* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. In view of the Appeal Brief filed on 4/12/07, PROSECUTION IS HEREBY REOPENED. New grounds of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

Response to Arguments

2. Applicant's arguments filed 4/12/07 have been fully considered and they are partially persuasive. The Dobrin reference has been removed from the rejection, thus arguments regarding Dobrin are moot. The inner attachment surface is not specifically claimed or precisely define din the specification. Therefore, it can be broadly read into any attachment surface including the surface with the fastener. Sayama, the reference teaches a non-irritating fastener outer layer. Applicant argues the Examiner does not

address the limitation of the adhesive coating. This limitation was addressed on page 6 of the Final Office action mailed 11/3/06 and is repeated in this action.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1, 4, 7, 9, 11, 14, 15, 18, 19, 21, 24, 25, 27-29, 31, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sayama in view of Ames et al. (US Statutory Invention Registration H1674).

As to claims 1, 4, 7, 9, 11, 14, 15, 18, 19, 21, 24, and 25 Sayama discloses an absorbent article 1 (Figure 1) defining a longitudinal axis, an overall length dimension measured parallel to the longitudinal axis, a transverse axis, first and second longitudinally spaced waist regions **6/7**, and a crotch region **8**, which extends between and interconnects the first and second waist regions. The absorbent article comprises an inner surface and an opposite outer surface. The absorbent article is capable of providing a pant configuration having a waist opening and a pair of leg openings when the front and waist regions are attached. The absorbent article of Sayama comprises an absorbent chassis comprising a liquid permeable bodyside liner **2**, a liquid impermeable outer cover **3** bonded to the bodyside liner (col.2 lines 7-10), and an absorbent assembly **4** disposed between the bodyside liner and outer cover. The absorbent article of Sayama further comprises attachment panels **11** and **12**. The attachment panels **12** are bonded to the absorbent chassis in the first (rear) waist region (Figure 1) and extend transversely outward from the absorbent chassis in the first waist region (Figure 1). The attachment panels have a length dimension that is about 20%-25% or greater than the overall length (Figure 1).

Each attachment panel comprises a nonwoven substrate (col. 3, lines 11-13) extending from the waist opening to the leg opening area. Sayama is silent on whether or not the attachment panels comprise elastomeric materials. Ames discloses an absorbent article comprising elastomeric attachment panels (Figure 1,elements 62/64 and 38; col. 14, line 64 through col. 15, line 12; and col. 17, line 15 through col. 18, line 21). It would have been obvious to one of ordinary skill in the art at the time of the

invention to modify the attachment panels of Sayama with the elastomeric attachment panels of Ames. Doing so would provide attachment panels that give the absorbent article an improved fit and reduces the possibility of sagging or gapping.

The absorbent article further comprises at least one fastening component **16** disposed in the second (front) waist region on the outer surface. The fastening component **16** comprising a plurality of engaging mechanical fastening elements projecting outward from the outer surface and adapted to refastenably engage the inner attachment surfaces **15** (col. 2, lines 19-29). The engagement of the fastening components **15/16** maintain the absorbent article in a pant configuration. The first and second waist regions are connectable only by the engagement of an inner attachment surface **15** and fastening components **16**.

Sayama/Ames further discloses first and second attachment panels **12** bonded to the absorbent chassis in the back waist region and extending transversely outward from the absorbent chassis, the first and second attachment panels comprising elastomeric nonwoven materials and having inner attachment surfaces **15**.

Regarding claims 18 and 31-34, Sayama/Ames discloses the absorbent article as claimed. With respect to the limitations of: the waist regions, length dimensions, absorbent assembly, attachment panels, fastening components, and mechanical fastening elements, the applicant is directed to discussion supra where the examiner

has set forth in Sayama where the above limitations are found. Sayama/Ames further discloses first and second attachment panels **12** in the back waist region extending transversely outward from the absorbent chassis and having a length dimension. Sayama/Ames does not specifically disclose that the length dimension is about 20% or greater of the overall length dimension. However, in Figure 1 of Sayama, the attachment panel is longitudinally oriented ('262 Figure 1, element **12**). In *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

The first and second attachment panels comprise an elastomeric nonwoven material having an inner attachment surface as described above. The first and second side panels are bonded to the absorbent chassis in the front waist region extending transversely outward from the absorbent chassis and having a length dimension that is about 20% or greater of the overall length dimension (Figure 1, element **11**). The fastening components **16** comprise a plurality of engaging elements projecting outward from the outer surface and adapted to engage the inner attachment surfaces of the attachment panels (col. 2, lines 41-43) and is capable of maintaining the article in a pant configuration. Sayama/Ames does not distinctly disclose the distance from the distal

edges of the panels to the fastening components, but it is obvious the fastening components are located a distance from the distal edge (Figure 1). In *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. An adhesive is used to bond the fastening component to the attachment panels.

6. Regarding claim 27-29, Sayama/Ames discloses the absorbent article substantially as claimed. With respect to the limitations of: the waist regions, length dimensions, absorbent assembly, attachment panels, fastening components, and mechanical fastening elements, the applicant is directed to the above 102(a) rejection where the examiner has set forth in Sayama where the above limitations are found. Sayama/Ames further discloses attachment panels comprise different portions of a single unitary panel member in that the panel and may be provided an elastomeric layer sandwiched between nonwoven materials ('674 col. 17, line 15 through col. 18, line 21). This configuration would create a nonwoven inner layer as arranged in the attachment panels of the absorbent article. The nonwoven layer is less elastic than the elastomeric layer and would inherently be gathered by the elastomeric layer. The panels are bonded to the absorbent chassis ('262 col. 2, lines 30-32 and col. 3, lines 11-20).

As to claim 29, Sayama/Ames incorporates by reference the panels may comprise inner and outer facing layers and a plurality of elastomeric segments between the inner and outer facing layers. Ames col. 18, lines 16-21 refer to zero strain laminates as taught by Buell et al. (USPN 5151092), which incorporate a plurality of elastomeric segments between inner and outer facing layers ('092 col. 18, lines 49-61).

7. Claim 8, 17, 26, and 30 as best understood by the examiner, are rejected under 35 U.S.C. 103(a) as being unpatentable over Sayama in view of Ames further in view of Cooper (USPN 5087253). With respect to the limitations of: the waist regions, length dimensions, absorbent assembly, attachment panels, fastening components, and mechanical fastening elements, the applicant is directed to the above 102(a) rejection where the examiner has set forth in Sayama where the above limitations are found. Sayama/Ames discloses the present invention substantially as claimed. However, Sayama/Ames fails to disclose the absorbent article comprises a pair of fastening components. Cooper teaches a combination diaper/training pant with a pair of fastener components disposed on the longitudinal sides of the diaper (Figure 16) to hold the diaper in a pant-like configuration. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a plurality of fastening components as taught in Cooper on the invention of Sayama/Ames. Doing so would allow the item to be adjustable, which Cooper teaches is desired.

Regarding claims 8, 17, 26, and 30, Sayama/Ames discloses all that is claimed in the present invention except Sayama/Ames does not provide fastening components

with a length-to-width ratio of 5 or greater. Cooper teaches a combination diaper/training pant with hook and loop fasteners disposed on the longitudinal sides of the diaper to hold the diaper tightly in place (col. 6, line 62). The fasteners of Cooper are positioned as shown in Figure 4 of '253 and have a length-to-width ration of about 7.5, which includes the range of about 5 or greater. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the diaper of Sayama/Ames with fasteners such as disclosed by Cooper in order to sufficiently hold the diaper on the user, which Cooper teaches is desired. A fastener with this length to width ratio as shown in Cooper covers about 80-98% of the distance between the waist and leg openings (Cooper Figure 1).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jacqueline F Stephens
Primary Examiner
Art Unit 3761

August 6, 2007